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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 802

ADDRIN COATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was charged (counts 1 and 2) with selling heroin on two occasions without a prescribed order form in violation of 26 U.S.C. 4705(a), and (count 3) with conspiring with his co-defendant, Dennis Aggers, to (a) sell heroin, knowing it to have been illegally imported, in violation of 21 U.S.C. 174, and (b) sell the drugs not in pursuance of an authorized order form, in violation of 26 U.S.C. 4705(a). After a jury trial in the United States District Court for the Eastern District of Missouri, petitioner was convicted of the conspiracy, and acquitted on the first substantive count. The jury disagreed concerning the second substantive count and a mistrial was declared as to it. On February 4, 1966, petitioner

was sentenced to imprisonment for eight years.[1] The court of appeals affirmed (Pet. App. 9–16).

The evidence showed the following. After her arrest on a narcotics charge, Mrs. Beatrice Taylor agreed to assist in apprehending the individuals who supplied her with heroin (Tr. 87–88).[2] She called Aggers who said he would contact "Larry" (Tr. 28, 60–67). Aggers came to her home and received $200 (Tr. 29). Aggers then telephoned his wife, whom he told to "call Larry and tell him that I have the money and that everything is all right." (Tr. 30.) After Aggers left, Larry telephoned Mrs. Taylor and informed her that the narcotics would be found in a cigarette package on the floor of a telephone booth at a certain intersection in St. Louis (Tr. 30, 70). Federal Narcotics Agent Patch, who had monitored Mrs. Taylor's conversations with Larry (Tr. 67–70), retrieved the package containing heroin from the telephone booth at the specified location (Tr. 71, Government Exh. 4, 5). The next day when agent Patch spoke to petitioner at his place of employment, Patch recognized petitioner's voice as that of the "Larry" who had conversed with Mrs. Taylor on the telephone (Tr. 76).

On July 14, 1965, Mrs. Taylor made another request to Aggers for heroin (Tr. 33, 77). Shortly thereafter, Larry called to advise that he was temporarily out of heroin, but expected a large shipment soon (Tr. 77). On the afternoon of July 22, Mrs.

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[1] Co-defendant Aggers was convicted on all three counts and sentenced to concurrent ten year terms of imprisonment.

[2] The record of trial, filed with the Clerk of this Court, includes the one-volume transcript of trial ("Tr.").

Taylor telephoned Aggers, who followed the same routine as in the prior transaction. Again Aggers came to the apartment, where he was given $400, made a telephone call to his wife, and departed. In a short while, Larry telephoned Mrs. Taylor and informed her that the narcotics were in a package atop a telephone booth at a designated location, Moffitt and Belt Streets in St. Louis (Tr. 37, 80–81). Agents who had been maintaining a surveillance of petitioner observed him enter a telephone booth and dial the number of the telephone in the booth at Moffitt and Belt Streets (Tr. 105, 107–108). Petitioner was overheard saying, "You ready? Okay, I'll make the call now" (Tr. 106). He then placed another call and told the recipient, "The stuff is in a package over the door of a phone booth at Moffitt and Belt." Agent Patch retrieved the package of heroin from the telephone booth at that location (Tr. 81–86, Govt. Exhs. 9, 10).

Petitioner's sole claim is that the district court failed to instruct that knowledge of illegal importation was a necessary element of conspiracy to violate 21 U.S.C. 174. Petitioner concedes that he failed to raise this issue in the district court, or to request such an instruction, but asserts the failure was "plain error," Rule 52(b), Fed. R. Crim. P. This contention is without merit. Petitioner was charged with conspiring to violate both 21 U.S.C. 174 and 26 U.S.C. 4705(a). Knowledge of illegal importation is an element of the former but not the latter statute. Moreover, a reading of the instructions in their entirety shows that they fully and fairly presented all

of the issues. The district judge read the indictment and the underlying statute to the jury, including that portion of 21 U.S.C. 174 which indicated that the criminal offender must have imported the drugs "knowing the same to have been imported or brought into the United States contrary to law." (Tr. 192–196). Immediately following the instruction on the statute the court made several references to the term "knowingly" and defined the term. The court then summarized: "Therefore, in order to find a defendant, or defendants, guilty, you must not only believe that they did the acts complained of, and of which they stand charged, but you must also believe that the acts were intentional and knowingly done by a defendant, or defendants" (Tr. 197).

The instructions as a whole sufficiently outlined the issues to be determined by the jury. Lack of further emphasis on the element of knowledge that the drug was illegally imported does not amount to plain error requiring reversal in the absence of exception below,[3] see *United States* v. *Bentvena*, 319 F. 2d 916, 938–940 (C.A. 2), certiorari denied, 375 U.S. 940; *United States* v. *Agueci*, 310 F. 2d 817 (C.A. 2), certiorari denied, 372 U.S. 959, and *United States* v. *Goldstein*, 323 F. 2d 753, 754 (C.A. 2), certiorari de-

[3] *United States* v. *Massiah*, 307 F. 2d 62 (C.A. 2), relied upon by petitioner, is not to the contrary. In that case, the majority found plain error for failure to charge on knowledge of illegal importation, only in light of the trial court's error in instructing on the wrong conspiracy statute (18 U.S.C. 371), and in doing so with such inclusiveness of other elements as to suggest "to the jury that knowledge of importation was not necessary * * *," 307 F. 2d at 70.

nied, 376 U.S. 920, and does not present an issue warranting review by this Court.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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